

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:

PLEASANTS CORP., *et al.*,¹

Debtors

Chapter 11

Case No. 18-50763 (AMK)
Cases Jointly Administered under
Case No. 18-50757 (AMK)

Hon. Judge Alan M. Koschik

**RESPONSE OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
TO ENERGY HARBOR'S EMERGENCY MOTION TO CONTINUE
AND HOLD IN ABEYANCE THE FINAL HEARING AND
OTHER DEADLINES RELATED TO THE AKIN GUMP STRAUSS
HAUER & FELD FINAL FEE APPLICATION (DOCKET NO. 4291)**

Yesterday Energy Harbor filed an “emergency motion” to postpone for six months when a third party, the Akin Gump firm, will file additional information about claimed fees for services involving tainted House Bill 6 (“HB 6”). Energy Harbor has not shown that there is an emergency (unless of its own creation). And Energy Harbor has not shown enough to justify its requested long delay.

The Office of the Ohio Consumers’ Counsel (“OCC”), a party to this bankruptcy case, responds to the emergency motion. OCC is the Ohio government agency that is statutorily charged with representing the interest of millions of Ohio residential utility consumers. Under tainted HB6, Ohioans would now be paying corporate welfare for the nuclear power plants of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: FE Aircraft Leasing Corp. (9245), case no. 18-50759; Energy Harbor Generation, LLC (0561), case no. 18-50762; Pleasants Corp. (5914), case no. 18-50763; Energy Harbor Nuclear Generation, LLC (6394), case no. 18-50760; Energy Harbor Nuclear Corp. (1483), case no. 18-50761; Energy Harbor LLC. (0186); and Norton Energy Storage L.L.C. (6928), case no. 18-50764. The Debtors’ address is: 341 White Pond Dr., Akron, OH 44320.

FirstEnergy Solutions (now Energy Harbor), were it not for a stay imposed by the Franklin County Common Pleas Court on December 21, 2020.

In its November 24, 2020 Order (Docket Number 4281) (the “Lobbying Order”), the Court sought additional disclosures by the Debtors’ lead bankruptcy counsel, Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”), regarding the payment of fees. The Court noted that the passage of HB6 has now led to multiple federal investigations, both civil and criminal.

There have been guilty pleas by Juan Cespedes and Jeff Longstreth on October 29, 2020. (Copies of the two plea agreements are attached together as Exhibit A.) Mr. Cespedes performed work for the Debtors as an “ordinary course professional” in his position as a principal of the Oxley Group LLC. The Court expressed concerns in the Lobbying Order about the Debtors’ lobbying activities related to HB6. That in turn relates to the Court’s interest in considering the payment of the fees. The Court required additional information by Akin Gump regarding these activities related to claims for payment of fees. The Court ordered the information to be filed today.

These additional disclosures fit with the Bankruptcy Court’s statutory duty to assess whether these lobbying expenses meet the standards of section 330 of the Bankruptcy Code. *See United States of America v. Schilling (In re Big Rivers Elec. Co.)*, 355 F.3d 415, 442 (6th Cir. 2004) (finding Court had jurisdiction to examine professional fees even if no party had objected); *Cupps & Garrison LLP v. Riehl (In re Two Gales, Inc.)*, 454 B.R. 427, 433 (6th Cir. B.A.P. 2011) (“Even if no objection has been raised by creditors or parties in interest, the bankruptcy court has both the power and the obligation to review fee applications.”).

Yesterday after 4:00 p.m., the Debtors suddenly filed an emergency motion (Docket Number 4291) asking for a six-month postponement of a hearing and the Court’s requirement for Akin Gump to file the additional information about fees for services related to House Bill 6. The

cryptic emergency motion is limited in its explanation for the proposed half-year delay. There is a statement that, because the lobbying relates to the criminal complaint and possibly other ongoing investigations, “it is in the best interests of the Debtors to continue the Hearing and the Declaration Deadline” *See Motion* at ¶ 12. Energy Harbor does acknowledge that Akin Gump is prepared to file on time today the information sought by the Court. No adequate explanation is given of why there is an “emergency” requiring revisiting of these Court deadlines on less than 24 hours’ notice.

Energy Harbor’s claimed “emergency” is about Court deadlines that were issued over six weeks ago. And the U.S. investigations involved in the matter became known in July of last year. There is an absence of an adequate explanation by Energy Harbor for delay. Under these circumstances, this Court should not postpone for half a year its deadlines requiring additional disclosure of the Debtors’ lobbying activities to pass HB6. Energy Harbor’s emergency motion should be denied.

Dated: January 8, 2021
Columbus, Ohio

Respectfully submitted,

s/ David. A. Beck
David A. Beck (0072868)
CARPENTER LIPPS & LELAND LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
Facsimile: (614) 365-9145
E-mail: beck@carpenterlipps.com

*SPECIAL OUTSIDE COUNSEL TO THE
OFFICE OF THE OHIO CONSUMERS’
COUNSEL*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was electronically filed on January 8, 2021 and served through the Court's electronic filing system and on the General Service List via email based on the listing posted on Prime Clerk's website as of the filing of this notice.

s/ David A. Beck

One of the Attorneys for the Special Outside
Counsel for the Office of the Ohio Consumers'
Counsel